IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6358 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order mad
JJJJ

#. The detention order dated 15-4-1999 passed by respondent No.2 - The Commissioner of Police, Ahmedabad against the petitioner in exercise of powers conferred under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act 1985 (`PASA' for short') is challenged in the present petition under Article 226 of the Constitution of India.

#. That the grounds of detention served and supplied to the detenu under Section 9(1) of the PASA, a copy of which is produced at Annexure-B interalia indicates that two prohibition cases were registered against the petitioner on 15-3-99 and 28-3-99 respectively. That both these cases are pending for investigation. That the two witnesses on assurance of their anonymity have given statement regarding the bootlegging activities of the petitioner on dated 14-4-99 and 15-4-1999 wherein, the incidents of dated 30-3-99 and 18-3-1999 have been narrated. That on the basis of the said material, respondent No.2 has come to the conclusion that the petitioner is bootlegger within the meaning of Section 2(b) of PASA. That enforcement of general provisions of law being insufficient to prevent the petitioner from continuing his prejudicial activities, detention order is necessary and hence the impugned order is passed.

#. It has been contended on behalf of the petitioner at bar that on 15-4-1999 when the impugned order was passed, the petitioner was in police custody on account of his arrest under Section 151 of CrPC. That though the petitioner was released on bail in both the registered cases, even though, the detaining authority has failed to consider the less drastic remedy of claiming cancellation of bail under Section 437(5) of CrPC and as such, the impugned order is bad in law on account of consideration of non application of mind.

#. That in the matter of ZUBEDABIBI RASIDKHAN PATHAN VS. STATE OF GUJARAT AND OTHERS 1995 (2) GLR 1134, the Division Bench of this Court has expressed the view that non consideration of less drastic remedy available under Section 437(5) of the CrPC claiming cancellation of bail amounts to non application of mind which vitiates the subjective satisfaction, thus rendering the detention order bad in law. That the said view has been approved and endorsed in the proceeding of Letters Patent Appeal No : 1056 of 1999 decided on 15-9-99 by this Court (Coram : C.K.Thakker & A.L.Dave, JJ.).

#. On scrutiny of papers, it appears that in the last but one para, the detaining authority has observed

that after the petitioner is produced from the police custody before the Court, the petitioner is likely to apply for bail and got himself released on bail, and therefore, he is likely to continue his anti social activities, and as such, the detention order is necessary. The said observation clearly suggests that the detaining authority had failed to consider the aspect of less drastic remedy while passing the impugned order and as such, the subject satisfaction reached by the detaining authority having been vitiated, has rendered the impugned order invalid.

#. As the petition succeeds on the aforesaid ground alone, it is not necessary to consider and decide the other contentions raised in the petition.

#. On the basis of the aforesaid discussion, the petition is allowed. The detention order dated 15-4-99 passed by respondent No.2 - The Commissioner of Police, Ahmedabad City against the petitioner is hereby quashed and set aside. The petitioner - detenu - Chandanpuri Mangalpur Goswami is ordered to be set at liberty forthwith, if not required in any other case. Rule to that extent is made absolute.

Date : 12-1-2000 [A.K.Trivedi, J.]

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